



EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE  
GOVERNOR

March 23, 2010

The Honorable Lamar Alexander  
United States Senate  
455 Dirksen Senate Office Building  
Washington, DC 20510

Re: Native Hawaiian Government Reorganization Act, S. 2011/H.R. 2314,  
the "Akaka Bill"

Dear Senator Alexander,

In a few short months, my second term as Governor of Hawaii will conclude and I will return to private life. I had sincerely hoped that the campaign to afford federal recognition to Native Hawaiians through the "Akaka Bill" would reach a successful conclusion before I left office. As many will recall, I have traveled to Washington often to express my support for the Akaka Bill over the past eight years. This outcome is now in doubt due to material changes in the bill, which I think have cost it the support of a majority of Hawaii's people, as well as the endorsement of our two major newspapers.

Through this letter, I regretfully inform the Senate that I cannot support the 2010 version of the Akaka Bill, S.2011 and H.R. 2314, in their present forms, and I respectfully ask that they be rejected. This is a most difficult position for me to take because I continue to believe that federal recognition for Native Hawaiians, akin to federal recognition for American Indians and Alaska Natives, is the just and right thing to do.

The 2010 version of the Akaka Bill differs materially from the 2006 version, which the Senate last voted upon. That version provided for the preparation of a roll of Native Hawaiians. Following completion of the roll, the Native Hawaiian people would have the opportunity to select representatives to a governing body. The governing body would represent the Native Hawaiian people in negotiations with the State of Hawaii and the United States to determine a framework to provide economic and political self-determination to Native Hawaiians, just as similar bodies have done for American Indians and Alaska Natives.

These negotiations were intended to address, among other things, the powers to be exercised by the governing entity, the relationship between the powers exercised by the governing entity and those exercised by the State of Hawaii, and the potential transfer of assets, including land, to the governing entity.

The 2010 version of the Akaka Bill takes a decidedly different approach. In the 2010 version, Congress deems the Native Hawaiian governing entity a sovereign from the start, and grants to that entity broad and ill-defined powers, subject to further definition in negotiations.

The explicit sovereign immunity and exemption from regulation provisions in the present bill allow the Native Hawaiian governing entity, and its leaders, to conduct activities anywhere in Hawaii (and potentially any other state) in a way that is inconsistent with State criminal statutes otherwise applicable to all citizens, and inconsistent with virtually every conceivable state law that serves to protect the public, including state laws governing narcotics and dangerous drugs; civil defense; alcohol and tobacco; fire and building codes necessary for public safety; traffic safety; landlord-tenant matters; clean air, clean water, hazardous waste (and other state pollution statutes); child welfare, child protection, and child safety; public health; and food and drugs. It is not clear how the State could enforce its interests against unlawful or irresponsible actions by the governing entity or its elected leaders or employees.

While it is true that federally recognized Indian tribes enjoy sovereign immunity, most operate within a framework of well-defined legal principles that have been developed through hundreds of years of treaties, statutes, and case law. This body of law tends to mitigate many of the conflicts inherent when two sovereigns – state and tribal – exercise powers of government within a shared territory. However, federal Indian law is remarkably undeveloped when it comes to the powers of tribes that lack a land base. And, as previously noted, the Akaka bill does not provide a land base to the Native Hawaiian people.

In my judgment and the judgment of Hawaii's Attorney General, the 2010 approach inevitably sets the Native Hawaiian governing entity and the State of Hawaii on a jurisdictional collision course – a collision course whose damage may not be repaired until the conclusion of substantial, costly, and counterproductive litigation or further remedial legislation from the Congress, assuming the damage could ever be repaired.

This is neither just to the taxpayers of Hawaii, who will be called upon to fund the ensuing litigation and bear the burden of the unregulated activities of the Native Hawaiian governing entity, nor to Native Hawaiians, whose opportunity to pursue self-determination on their own terms will quickly be mired in a conflict that could last for many years or decades.

I first learned of this significant change in direction shortly before the Senate Committee on Indian Affairs was set to mark the bill late last year. Since that time, the State of Hawaii has had an opportunity to express its views on the 2010 version of the bill. However, the gap between what is acceptable to the State and what has been offered to the State is substantial. It is fair to say that these negotiations have reached an impasse.

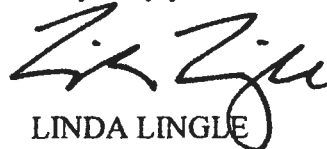
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Because of the changes that have been made to the bill, I believe the vast majority of Hawaii's citizens now oppose the bill as written. I enclose editorials from both of Hawaii's major daily newspapers, either opposing the changes made to the bill or advocating for new public hearings because of the nature of those changes. Both papers supported the bill before it was amended.

I am saddened that I must now strongly oppose this legislation, as I have strongly advocated for Native Hawaiian recognition throughout my time in office. But as Hawaii's Governor it is my responsibility to ask you to reject this bill in its current form.

Please feel free to call me, or Hawaii Attorney General Mark Bennett at (808) 586-1282, if you wish to discuss this matter. Thank you for your consideration of this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Linda Lingle", with a large, stylized loop at the end.

LINDA LINGLE  
Governor, State of Hawaii

Attachments